

**ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL REGULATION  
DIVISION OF SOLID AND HAZARDOUS WASTE**

**Solid Waste Activities by Rail Carriers**

<b>Proposed Amendments:</b>	<b>N.J.A.C. 7:26-2.1, 3. 2, 3.6, and N.J.A.C. 7:26H-1.6</b>
<b>New Rule:</b>	<b>N.J.A.C. 7:26-2D</b>
<b>Authorized By:</b>	Bradley M. Campbell, Commissioner, Department of Environmental Protection
<b>Authority:</b>	N.J.S.A. 13:1E-1 et seq., 13:1B-3, 13:1D-1 et seq., 13:1D-125 et seq., 13:1E-9, 26:2C- et seq., 47:1A-1 et seq., 58:10-23.11, and 58:10A-1 et seq.
<b>Calendar Reference:</b>	See summary below for explanation of Exemption to calendar requirement.
<b>DEP Docket No:</b>	
<b>Proposal Number:</b>	PRN 2003-

A public hearing concerning this proposal will be held on

Date:

Time: 9:00 am until close of comments

New Jersey Department of Environmental Protection

Public Hearing Room

401 East State Street

Trenton, New Jersey 08625

Submit written comments by (no later than 60 days after publication) to:

Karen Hershey, Esq.

Attention: DEP Docket Number \_\_\_\_\_

Office of Legal Affairs

P.O. Box 402

Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters who have access to word processing software submit comments on this proposal to the Department on paper as well as on disk. The Department will use the paper version to ensure that the uploading was accomplished successfully. Submission of the disk is not a requirement; the Department will accept all comments submitted in writing prior to the end of the comment period.

The Department prefers Microsoft Word 97, WordPerfect 5.x or 6.0, and ASCII, but can convert and review many other formats as well. MacIntosh formats should not be used. Any

commenter who wishes to use software not mentioned above may the Department at (609) 984-6880 to check compatibility. Text enhancements such as underlines and bolds are often not converted correctly between software documents. Therefore, when suggesting text revisions, commenters should show the text as they desire to see it in the rule.

Comments on the proposal summary should be included with comments on the pertinent section of the rule text, wherever possible, to eliminate duplicative comments and facilitate the Department's task of organizing and responding to comments. Since comments will be sorted electronically, the following format should be used for each comment:

Citation(tab)COMMENT: Comment text (Company Name).

For example:

7:26-2.1(c) COMMENT: The exemption from solid waste facility permitting for a rail carrier as defined in 49 U.S.C. §10102 that transfers containerized or non-containerized solid waste to or from rail cars is supported (ABC Corporation).

Copies of this proposal document can be downloaded electronically from the Department's web page at [www.state.nj.us/dep/dshw](http://www.state.nj.us/dep/dshw).

The agency proposal follows:

### **Summary**

Because a 60-day comment period is provided on this notice of proposal, this notice of

proposal is exempted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

The United States Congress enacted the Interstate Commerce Commission Termination Act of 1995 (Pub. L. No. 104-88, 109 Stat. 803, codified at 49 U.S.C. §10101 *et seq.*) (the “Act”) in an effort to reduce federal regulation of railroads. The Act abolished the United States Interstate Commerce Commission and transferred certain of its functions to the United States Surface Transportation Board (“STB”), an independent federal agency with jurisdiction over certain railroad regulatory matters. The Act grants jurisdiction to the STB over transportation by rail carrier that is only by railroad, or by railroad and water when the transportation is under common control, management, or arrangement for a continuous carriage or shipment. 49 U.S.C. § 10501(a). The Act also has the effect of preempting state and local regulation over railroad construction and operations, 49 U.S.C. §10501(b), but recognizes the important role state and local governmental agencies must play in enforcing federal, state and local environmental laws and regulations.

At N.J.A.C. 7:26, the New Jersey Department of Environmental Protection (Department) currently regulates all transfers of solid waste from one mode of transportation to another, and requires all solid waste transfer facilities to obtain a permit and obtain approval from the Department prior to receiving, processing or transferring solid waste. It has been determined that the Department’s authority to permit a transfer facility owned and operated by a rail carrier and used for transferring shipments of solid waste to or from rail may be partially preempted by the ICC Termination Act.

Through this proposal, the Department is proposing to amend its regulations by adding (at N.J.A.C. 7:26-2.1(c)) an exemption to the permit requirements of its solid waste regulations for rail carriers that transfer solid waste (as defined at N.J.A.C. 7:26-1.4) to or from rail cars. For the purposes of this proposal, the term “rail carrier” means a person as defined in 49 U.S.C.

§10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, pursuant to 49 U.S.C. §10901 or 10902, by the Surface Transportation Board (or its predecessor agency) and holds out to the general public that the operations at the facility for which the exemption is applicable are being conducted by it or on its behalf as part of its rail transportation services. The Department is further proposing to amend its regulations by adding (at N.J.A.C. 7:26-3.6) an exemption to the regulations governing the authorization and operation of intermodal container facilities for rail carriers. The Department is further proposing to amend its regulations by adding (at N.J.A.C. 7:26H-1.6) an exemption to the requirement of obtaining a Certificate of Public Convenience and Necessity for rail carriers engaged in the business of solid waste disposal and an exemption at N.J.A.C. 7:26-2.1(c)(2) from the requirement to submit a disclosure statement under the A-901 program (as it is more commonly known) for these rail carriers. These proposed exemptions are intended to recognize the jurisdiction of the STB over rail construction, permitting and operations. These exemptions are applicable only to rail carriers and will not apply to solid waste haulers that transport containerized or non-containerized solid waste to rail carriers via truck, barge or other non-rail modes. These haulers shall remain subject to all applicable solid waste regulations, including but not limited to registration and district solid waste flow control provisions.

While the Act may partially preempt the Department's authority to issue permits to rail carriers that engage in the solid waste activities noted above, it does not preempt the role state and local government agencies play in enforcing federal, state, and local environmental laws. Therefore, the Department is further proposing to add a new rule, N.J.A.C. 7:26-2D, to ensure compliance by these rail carriers with the various environmental statutes that are intended to protect the health and safety of New Jersey residents and prevent degradation of the state's environment. Due to significant public health, safety, and environmental concerns that must be addressed with the operation of solid waste transfer facilities that fall within the new rule, notwithstanding the proposed exemptions, the Department will continue to require that such

facilities operated by rail carriers be subject to the solid waste facility operating, record keeping and reporting requirements that are applicable to non-exempt transfer stations. The exemption will be conditioned so that exempted solid waste transfer facilities must still comply with various environmental standards including, but not limited to, the requirement that all solid waste processing takes place within the confines of an enclosed building with adequate air and wastewater controls to protect human health, safety and the environment.

In addition to the standards above, exempt rail carriers remain subject to compliance and other inspections conducted by Department enforcement personnel as well as delegated County Environmental Health Agency (“CEHA”) personnel. Department and CEHA personnel are authorized under the Solid Waste Management Act at N.J.S.A. 13:1E-9 to enter property and enforce solid waste regulations. Such enforcement activities include, but are not limited to, the entering upon any conveyance, site, place, and building to inspect, procure samples, examine records or any other reasonable purpose necessary to determine compliance with environmental laws. Rail carriers that violate the conditions of the proposed exemptions or other regulatory provisions will be subject to applicable enforcement action including the payment of penalties.

The Department reserves the right to revoke these exemptions if the STB, or a reviewing court, determines that solid waste facility design and permitting requirements are not partially preempted by 49 U.S.C. §10501(b).

The specifics of the proposed amendments and new rule follow.

At N.J.A.C. 7:26-2.1(a), the Department is adding sections 2C and 2D to the listing of sections that constitute the rules and regulations governing the disposal of non-hazardous solid waste. N.J.A.C. 7:26-2C, which addresses the Silver Track II Program for landfills, was promulgated on June 17, 2002, but inadvertently left out of the listing at N.J.A.C. 7:26-2.1(a) at that time. N.J.A.C. 7:26D is proposed herein as a new rule.

Proposed N.J.A.C. 7:26-2.1(c) sets forth specific exemptions from solid waste regulation for rail carriers. Rail carriers that transfer containerized or non-containerized solid waste to or

from rail cars are exempt from the permitting requirements of Subchapter 2, though subject to the provisions of N.J.A.C. 7:26-2D. Rail carriers engaged in the business of solid waste disposal or transportation by rail, but that do not engage in the business of solid waste collection (as defined by N.J.S.A. 13:13E-3) by other means of transportation within the State of New Jersey, are exempted from the requirement to submit an A-901 disclosure statement pursuant to N.J.A.C. 7:26-16.3. These exemptions do not apply to a solid waste transporter that transports waste to a rail carrier via truck, barge or other non-rail modes. These transporters remain subject to all applicable solid waste regulations, including registration and district plan solid waste flow control provisions.

Proposed new rule N.J.A.C. 7:26-2D sets forth the requirements for rail carriers that transfer containerized or non-containerized solid waste to or from rail cars.

N.J.A.C. 7:26-2D(a) defines the term “rail carrier” as it applies to this subchapter.

N.J.A.C. 7:26-2D(b) requires rail carriers that transfer containerized or non-containerized solid waste to or from rail cars provide the Department with certain information prior to commencing solid waste transportation operations. This information includes the geographical location of the rail carrier’s facility, identifying the name of the municipality in which the facility is located and the facility’s address.

N.J.A.C. 7:26-2D(c) sets forth the specific design and operational requirements for rail carriers that engage in the transportation of solid waste exclusively in the form of sealed containers of solid waste, but do not engage in any form of solid waste tipping, processing, sorting, compaction, or the removal of solid waste from a container to transfer to another container or vehicle. Prior to commencing operations, these rail carriers must provide the Department with a narrative from an officer of the rail carrier describing the facility operations and certifying that containers will not be opened. They must also certify that employees, the public and the environment will not be exposed to solid waste except as provided under the exemption.

Operational requirements for these facilities include time limits on the storage of putrescible, non-putrescible and liquid non-hazardous ID 72 waste and prohibitions on the queuing and staging of solid waste vehicles on any public roadway or in such a manner that would cause traffic backups and related traffic hazards on access roads servicing the facility. Solid waste received, stored or transferred at the facility must at all times be in sealed containers that do not leak, nor are opened, and that are secured in a manner that prevents unauthorized access to the containers and their contents. Containers holding ID 72 liquid solid waste, however, may be opened briefly for the purpose of sampling the liquid, provided immediately after sampling, the container is resealed. The facility must be operated in such a manner to effectively control insects, other arthropods and rodents at the facility, and to prevent migration of odors outside the confines of the rail carrier's property or the emission of air contaminants in violation of the Department's air standards at N.J.A.C. 7:27-5.2(a).

Rail carriers must also comply with the noise emission standards set forth in Title 49, Code of Federal Regulations, Part 201 and any applicable regulation promulgated pursuant to the State Noise Control Act, N.J.S.A. 13:1G-1 et seq. Vehicles, facilities and appurtenances (other than those owned or operated by rail carriers) must be positioned and buffered in such a manner that sound levels generated by the operation do not exceed limits established pursuant to the Noise Control Regulations, N.J.A.C. 7:29. Adequate water and fire-fighting equipment must be maintained or readily available to extinguish any and all types of fires. Telephone numbers of local fire, police, ambulance and hospital facilities must be posted in and around the facility at all times.

Lastly, only vehicles properly registered and decalated by the Department (or exempt therefrom) may be admitted to the facility. Lastly, the Department's designated representatives or inspectors shall have the right to enter and inspect any building or any other portion of the rail facility at any time. Discharges or releases of solid waste to the environment must be reported, and the facility must designate an on-site emergency coordinator to handle emergency situations.



N.J.A.C. 7:26-2D(d) sets forth the regulatory requirements for rail carriers that engage in tipping of solid waste. Many of these requirements are identical to those in N.J.A.C. 7:26-2D(c) and include the following: time limits for storage of putrescible, non-putrescible, and ID 72 liquid waste; control of odors and air emissions; adequate water supply and fire fighting equipment; insect, arthropod, and rodent controls; queuing and staging of solid waste vehicles; positioning and buffering of facilities and vehicles to address noise; properly registered vehicles; inspector rights; release and discharge reporting, on-site emergency coordinator designation; and penalty provisions for non-compliance.

Additional operating requirements at these facilities include tipping, sorting, loading, storage and compaction of materials only within an enclosed building; concrete or equivalent tipping floors or ramps to ensure proper containment and channeling of wastewater; and a system to collect, store, and properly dispose of wastewater, including wash-out and cleaning of equipment, trucks and floors. Within each 24 hour period, areas where waste was deposited or stored must be cleaned. Waste is prohibited from being stored overnight without effective odor treatment, and the facility property must be maintained free of litter, debris, unprocessed waste, process residuals and effluents. Methods to control dust and prevent the migration of odors outside the enclosed building or the emission of air contaminants are required as well. Trucks must be weighed on certified scales to comply with the reporting requirements of N.J.A.C. 7:26-2.13. Roadways and storage areas at the facility must have concrete or asphalt paving in areas where vehicles are loaded and unloaded. For waste which must be manually unloaded from transport vehicles or vehicles that are not required to be registered, a separate secure unloading area must be provided. A separate secure area must also be provided for the drop-off or transfer of asbestos and asbestos-containing waste material. The container used for drop-off or transfer of this material must be fully enclosed and located on an impermeable surface. Loading the asbestos into this container is limited to facility personnel or an asbestos removal contractor. Rail carrier facilities are prohibited from accepting or in any manner handling hazardous waste

or regulated medical waste except in compliance with all applicable requirements for such activities pursuant to the solid waste regulations at N.J.A.C. 7:26 and the hazardous waste regulations at N.J.A.C. 7:26G. Facilities which inadvertently accept an unauthorized waste type must immediately report the event to the Department's environmental hotline, place the waste in a secure area under their control and await instruction from the Department as to the proper disposal of the waste.

Lastly, rail carrier facilities that tip solid waste are subject to specific reporting requirements including maintaining a daily record of wastes received; keeping this daily record at the facility and making it available for inspection; verifying, retaining, and making available for inspection a waste origin and disposal form for each load of solid waste received; and submitting monthly summaries of waste received to the Department on the forms provided. This monthly summary must be submitted to the Department no later than twenty days after the last day of each month and include the information specified in N.J.A.C. 7:26-2.13(e).

Some of the above operating requirements are not applicable to facilities that handle ID 72 liquid non hazardous waste; therefore, an exemption from them is provided. These rail carrier facilities, however, are subject to additional regulatory requirements to ensure that the waste is handled in an environmentally responsible manner. Rail carriers may pump ID72 liquid waste directly from or to rail cars and other transportation vehicles provided the loading and unloading areas used are equipped with secondary containment or diversion designed to prevent leaked waste from being discharged to the environment. Rail carriers are prohibited from storing ID 72 waste other than in containers or above ground tanks; these storage vessels must be in good condition and not leaking. Containers and above ground tanks are required to be equipped with secondary containment to prevent any waste materials from being released into the environment. Rail carriers are required to take precautions to prevent reactions when receiving, storing, or transferring incompatible waste or mixtures of incompatible wastes and other materials. Detailed chemical and physical analysis of a representative sample of the waste is required

before a facility receives, stores, or transfers ID 72 liquid waste; this analysis must be repeated as necessary to ensure it remains accurate and up-to-date. Lastly, upon detection of a release of ID 72 liquid waste to the environment, the facility is required to stop the release, contain the released material, cleanup and properly manage the released waste, and repair and replace any leaking storage or treatment containers or tanks, if necessary, prior to returning them to service.

At N.J.A.C. 7:26-3.2(b), the Department is adding a reference to N.J.A.C. 7:26-2.1(c)2 to the list of entities exempt from the requirement to file a disclosure statement.

At N.J.A.C. 7:26-3.6(a)1, the Department is exempting rail carriers that transfer containerized or non-containerized solid waste to or from rail cars from the intermodal container requirements of 7:26-3.6. These rail carriers are, however, fully subject to the regulatory provisions of N.J.A.C. 7:26-2D as explained above.

At N.J.A.C. 7:26-3.6(a)2 the Department is limiting the types of waste intermodal container facilities can handle to solid waste as defined by N.J.A.C. 7:26-1.6 and those waste types identified and listed at N.J.A.C. 7:26-2.13. This requirement is not new; it has been recodified from N.J.A.C. 7:26-3.6(a), correcting the reference to the definition of solid waste from “1.4” to “1.6.” Operators of authorized intermodal container facilities may conduct other solid waste, regulated medical waste, or hazardous waste management activities at the facility, provided the operator complies with all permitting and operating requirements for such activities pursuant to the solid waste regulations at N.J.A.C. 7:26 and the hazardous waste regulations at N.J.A.C. 7:26G as applicable.

Lastly, at N.J.A.C. 7:26-2.1(c)(2) and N.J.A.C. 7:26H-1.6(f) respectively, the Department has added an exemption from the requirement to submit a disclosure statement and an exemption from the requirement to obtain a Certificate of Public Convenience and Necessity (“CPCN”) for rail carriers that provide common carrier railroad transportation when engaged in the business of solid waste disposal, but that do not engage in the business of solid waste collection (as defined by N.J.S.A. 13:13E-3) by other means of transportation within the State of New Jersey. This is

provided they have been issued a certificate or license by the Surface Transportation Board (or its predecessor agency). The Department believes that the Act may partially preempt the Department's authority to require these rail carriers to obtain a license under the A-901 program or a CPCN.

### **Social Impact**

By clarifying the scope of the Department's regulation of rail carriers engaged in the transfer of solid waste to or from rail cars, the regulated community will be better able to understand its regulatory obligations. Shifting movement of freight from trucks to rail has the positive public benefit of reducing the use of fossil fuels thereby conserving fuel and decreasing emissions, decreasing highway congestion, improving road safety by reducing truck traffic, and decreasing the impact on publicly funded road maintenance and operations caused by such truck traffic. In addition, the proposed exemption from the Department's solid waste regulations for rail carriers engaged in the transfer of solid waste to or from rail cars may create incentives for such entities to begin or expand handling of solid waste, thereby creating greater competition in the industry which may lower costs to the public for solid waste collection and disposal.

### **Economic Impact**

The Department expects an overall positive economic impact to rail carriers and the public by exempting rail carriers engaged in the transfer of solid waste to or from rail cars from having to obtain a permit from the Department prior to commencing construction or operation of a solid waste facility. Greater competition in the solid waste industry may lead to reduced waste disposal rates for the public if such activities are exempted from the Department's solid waste permitting regulations. Additionally, rail carriers that engage in such activities will experience a

cost savings through exemption from the preparation and submission of facility applications for the Department's approval, and the associated fees.

The proposed regulations will, however, clearly increase competition within the solid waste disposal industry and may therefore negatively impact existing non-rail carrier solid waste transfer facilities. These facilities may need to become more efficient to remain economically viable. The Department has carefully considered this economic impact, but believes that the benefits to the general public from this increased competition will outweigh any negative impacts. Moreover, it should be noted that the de-regulation of the rail industry required by the Interstate Commerce Commission Termination Act was a decision made by the Congress of the United States, and with which the Department must lawfully comply.

### **Environmental Impact**

Because waste handled by exempted carriers will remain managed in accordance with the operational requirements required for permitted solid waste transfer facilities, environmental impacts from facility operations should be minimal. Additionally, shifting freight movement from truck to rail should result in lower air emissions because trains emit less pollution per ton-mile than trucks.

### **Federal Standards Analysis**

Executive Order 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The purpose of this rulemaking is to amend the Department's permitting regulations to exempt rail carriers operating under the jurisdiction of the STB that transfer solid waste to or from rail cars from

solid waste permitting regulations. The proposed amendment will not exceed any Federal standard or requirement because it creates an exemption from State regulation. Moreover, there are no federal standards that specifically apply to solid waste transfer operations by rail carriers. Therefore, no comparison with Federal standards is required.

### **Jobs Impact**

The proposed exemption should have a positive impact on the creation of jobs in New Jersey. The Department expects rail carrier facilities handling the transfer of solid waste to or from rail cars to open or expand operations as a result of the exemption, which should result in the hiring of new employees. The number of employees hired will depend on the scope of operations at such facilities. However, since the proposed regulations will clearly increase competition within the solid waste disposal industry, they may negatively impact existing non-rail carrier solid waste transfer facilities. These facilities may need to become more efficient in order to remain economically viable, which could result in a reduction in staff. Non-rail related facilities that cannot effect sufficient efficiencies may close down, thereby resulting in additional job loss. Because each member of the regulated community may have different strategies to address competition, and differing abilities to compete, it is not possible to estimate accurately the extent, if any, to which this rule proposal will affect employment.

### **Agriculture Industry Impact**

The Department believes the proposal to exempt rail carriers transferring solid waste to or from rail cars from solid waste regulation will have no impact on the agricultural industry because the industry as a whole ships agricultural products, not waste, by rail.

### **Regulatory Flexibility Statement**

In accordance with the New Jersey Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed exemption will not impose additional reporting, record keeping, or other compliance requirements on small businesses because the proposed amendment exempts all businesses, including small businesses, that meet the applicable exemption requirements from the solid waste permitting regulations. With the exception of a one-time initial notification of activities, no new requirements are being added. While exempt from solid waste facility permitting, small businesses that take advantage of the proposed exemptions will still need to comply with the operational, recordkeeping and reporting requirements that previously applied to them and upon which the exemption is conditioned. Small business may also need to employ professional services firms to comply with the design and operational requirements of N.J.A.C. 7:26-2D.

### **Smart Growth Impact Statement**

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)) to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan ("State Plan"). The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments' and new rule's impact on smart growth and the implementation of the State Plan. The Department believes this proposal will have a positive impact on Smart Growth in New Jersey because it will increase the efficiency of freight movement and thereby reduce the number of trucks on the State's highways in furtherance of the goals of Governor McGreevey's Executive Order #43 (1/7/03). Moreover it may direct transportation investments into the

redevelopment of the State's older urban and suburban areas where many rail carrier operations are currently located. This should have a positive impact on implementation of the State Plan as well since it will promote the development and redevelopment in these areas with existing infrastructure.

**Full text** of the proposed amendments follow (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## CHAPTER 26

### SOLID WASTE REGULATIONS

#### 7:26-2.1 Scope and applicability

(a) This subchapter and N.J.A.C. 7:26-2A [and], 2B, **2C, and 2D** shall constitute the rules and regulations of the Department governing the disposal of nonhazardous solid waste unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7, or 1.8.

(b) (No change.)

**(c) This subsection sets forth the specific criteria for exempting rail carriers:**

**1. This subchapter does not apply to a rail carrier that transfers containerized or non-containerized solid waste to or from rail cars . For the purpose of this subchapter, the term "rail carrier" shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) and holds out to the general public that the operations at the facility for which the exemption under this subchapter is applicable are being conducted by it or on its**



behalf as part of its rail transportation services. However, a rail carrier that transfers containerized or non-containerized solid waste to or from rail cars is not exempt from regulation pursuant to the Solid Waste Management Act, and shall be subject to the provisions of N.J.A.C. 7:26-2D.

2. Rail carriers engaged in the business of solid waste disposal or transportation by rail, but that do not engage in the business of solid waste collection (as defined by N.J.S.A. 13:13E-3) by other means of transportation within the State of New Jersey, are exempted from the requirement to submit a disclosure statement pursuant to N.J.A.C. 7:26-16.3.

3. The exemptions set forth at N.J.A.C. 7:26-2.1(c)(1) and (2), above, shall not apply to a solid waste transporter that transports waste to a rail carrier via truck, barge or other non-rail modes. Such a transporter shall remain subject to all applicable solid waste regulations, including, but not limited to, registration and district plan solid waste flow control provisions.

7:26-2D Requirements of rail carriers that transfers containerized or non-containerized solid waste to or from rail cars.

(a) For the purpose of this subchapter, the term “rail carrier” shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) and holds out to the general public that the operations at the facility are being conducted by it or on its behalf as part of its rail transportation services.

(b) A rail carrier that transfers containerized or non-containerized solid waste to or from rail cars shall provide the Division of Solid and Hazardous Waste with the following information prior to commencing solid waste transportation operations within the State of New Jersey: A description of the geographical location of the rail carrier’s facility,

identifying the name of the municipality in which the facility is located and the address of the facility. This information shall be sent to:

New Jersey Department of Environmental Protection

Division of Solid and Hazardous Waste

401 East State Street, P.O. Box 414

Trenton, New Jersey 08625-0414;

(c) A rail carrier that engages in the transportation of solid waste at a facility owned by such rail carrier within the State of New Jersey exclusively in the form of sealed containers of solid waste, and that does not engage in any form of solid waste tipping (such as onto the floor of a building or other structure), processing, sorting or compaction, or the removal of solid waste from a container to transfer to another container or vehicle, shall comply with the following requirements:

1. The rail carrier shall provide the Division of Solid and Hazardous Waste with the following information, in addition to the information required by N.J.A.C. 7:26-2D(b), prior to commencing solid waste transportation operations: A narrative from an officer of the rail carrier describing the facility operations and certifying that containers will not be opened and that employees, the public or the environment will not be exposed to solid waste except as allowed in accordance with this section. This information shall be sent to the same address as N.J.A.C. 7:26-2D(b).

2. The rail carrier shall operate in accordance with the following standards:

i. Non-putrescible solid waste shall not remain at the rail facility for more than 10 days, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers.

Putrescible solid waste shall not remain at the rail facility for greater than 72 hours.

ii. Solid waste received, stored or transferred at the rail facility shall at all times be contained in sealed containers that do not leak any liquids or solid materials and are not opened for any purpose at the facility, except that a container holding ID 72 liquid solid

waste may be opened briefly for the purpose of sampling the liquid provided the container is immediately resealed.

iii. The operation shall not result in the migration of odors outside the confines of the rail carrier's property or the emission, except by locomotive or locomotive engine, of air contaminants in violation of N.J.A.C. 7:27-5.2(a).

iv. All solid waste containers staged or stored at the facility shall be secured at all times in a manner that prevents unauthorized access to the containers and their contents.

v. An adequate water supply and adequate fire-fighting equipment shall be maintained or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

vi. The operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

vii. The queuing and staging of solid waste vehicles on any public roadway is prohibited;

viii. The queuing and staging of solid waste vehicles shall be conducted so as to prevent traffic backups and related traffic hazards on access roads servicing the facility;

ix. Facilities and all appurtenances, other than those owned or operated by rail carriers, including vehicles while onsite, shall be positioned and buffered in such a manner that sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control Regulations, N.J.A.C. 7:29 and rail carriers shall at all times comply with the noise emission standards set forth in Title 49 Code of Federal Regulations, Part 201, and any applicable regulation promulgated pursuant to the State Noise Control Act, N.J.S.A. 13:1G-1 et seq.;

x. Only solid waste vehicles properly registered, pursuant to N.J.A.C. 7:26-3, with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted at the facility;

xi. The Department's designated representatives and inspectors shall have the right to enter and inspect any building or any other portion of the rail facility, at any time. This right to enter and inspect includes, but is not limited to:

(1) Observing and sampling any materials on site;

(2) Photographing any portion of the facility, solid waste vehicles, containers, and container contents;

(3) Investigating an actual or suspected source of pollution of the environment;

(4) Ascertaining compliance or non-compliance with the statutes, rules, or regulations of the Department; and

(5) Reviewing and copying all records required by federal or state statutes or regulations, which shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

xii. Any release or discharge of any solid waste at the facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hot Line at 1-877-WARNDEP. The report shall specify the type of substance discharged and the estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification.

xiii. The facility operator shall designate an on-site emergency coordinator who will be available during all hours of operation for the purpose of handling emergency situations, such as, but not limited to, spills, discharges or releases of solid wastes at the facility.

xiv. The facility shall maintain daily records of waste received in accordance with N.J.A.C. 7:26-3.6(h)1, and shall submit quarterly reports within twenty (20) days of the end of each calendar quarter summarizing waste receipts in accordance with N.J.A.C. 7:26-3.6(h)2.

xv. Any rail carrier that fails to operate in compliance with the requirements of this section shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5.

(d) A rail carrier that engages in the transportation of solid waste, and that engages in any form of solid waste tipping (such as onto the floor of a building or other structure), processing, sorting or compaction, or the removal of solid waste from a container to transfer to another container or vehicle, shall comply with the following requirements:

1. All facility processing, tipping, sorting, loading, storage and compaction of materials (that is solid waste and mixtures of solid waste and recyclable materials) shall occur within the confines of an enclosed building that complies with all requirements of the Uniform Construction Code;

2. Facilities shall have concrete or equivalent tipping floors or ramps to ensure proper containment and channeling of wastewater to sanitary sewer connections or holding tanks and constructed to withstand heavy vehicle usage, in compliance with applicable rules regarding the discharge of wastewater and the utilization of holding tanks at N.J.A.C. 7:14B;

3. Facilities shall have a system that collects, stores, and properly disposes of wastewater generated during normal operations, including wash-out and cleaning of equipment, trucks and floors, in compliance with the applicable rules regarding wastewater and stormwater management at N.J.A.C. 7:14A;

4. Within each twenty-four (24) hour period the operator shall clean each area where waste has been deposited or stored;

5. No waste shall be stored overnight without effective treatment to prevent odors associated with putrefaction;

6i. Facility property surrounding the actual waste management area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residuals and effluents. Methods (such as fencing) of effectively controlling windblown papers and other lightweight materials shall be implemented;

7. Methods of effectively controlling dust shall be implemented in order to prevent migration outside the enclosed building and offsite;

8. The operation shall not result in the migration of odors outside the confines of the enclosed building or the emission of air contaminants, except by locomotive or locomotive engine, in violation of N.J.A.C. 7:27-5.2(a);

9. An adequate water supply and adequate fire-fighting equipment shall be maintained or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

10. The operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

11. The facility shall operate certified scales for the reporting requirements of N.J.A.C. 7:26-2.13 for waste transported by trucks;

12. Facilities' onsite roadways and storage areas shall have concrete or asphalt paving in those areas subject to vehicle loading and unloading activities;

13. The queuing and staging of solid waste vehicles on any public roadway is prohibited;

14. The queuing and staging of solid waste vehicles shall be conducted so as to prevent

traffic backups and related traffic hazards on access roads servicing the facility;

15. Facilities and all appurtenances, other than those owned or operated by rail carriers, including vehicles while onsite, shall be positioned and buffered in such a manner that sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control Regulations, N.J.A.C. 7:29 and rail carriers shall at all times comply with the noise emission standards set forth in Title 49 Code of Federal Regulations, Part 201, and any applicable regulation promulgated pursuant to the State Noise Control Act, N.J.S.A. 13:1G-1 et seq.;

16. Only solid waste vehicles properly registered pursuant to N.J.A.C. 7:26-3 with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted for loading or unloading of any solid waste at the facility;

17. The facility shall designate a secure area under the facility's control, located a safe distance from the tipping area, where solid waste may be unloaded from those solid waste vehicles that are either exempt from registration requirements of N.J.A.C. 7:26-3.3 or which must be manually unloaded. Bulky items and recyclable materials may be provided for in this manner.

18. The facility may establish a separate secure area for the drop-off and/or transfer of asbestos and asbestos-containing waste material (ACWM). The facility shall ensure that the container used for drop-off and /or transfer is fully enclosed and located on an impermeable surface. No person other than facility personnel or a licensed commercial asbestos removal contractor may load the asbestos or ACWM into the container used for drop-off and/or transfer.

19. Rail carrier transfer stations and materials recovery facilities who receive, store or transfer only ID72 liquid wastes are not required to comply with 1-2, 4-7, 10, 17 and 18

above; however these rail carriers shall operate in accordance with the following standards:

i. Rail carriers may pump ID72 liquid waste directly from or to rail cars and other transportation vehicles provided all loading and unloading areas employed are equipped with a means of secondary containment or diversion designed to prevent leaked waste from being discharged to the environment. The secondary containment or diversion system shall block all probable routes by which leaked waste could reasonably be expected to become discharge and have a capacity to contain the volume of the largest compartment in any tank car or tank truck utilizing the area;

ii. A rail carrier shall not store ID72 wastes other than in containers and/or aboveground tanks;

iii. Containers and aboveground tanks used to store ID72 liquid wastes shall be in good condition (no severe rusting, apparent structural defects or deterioration) and not leaking (no visible leaks);

iv. Containers and aboveground tanks shall be equipped with a secondary containment system consisting of dikes, berms, or retaining walls, and a floor that shall cover the entire area within the secondary containment system and be sufficiently impervious to waste materials to prevent any waste materials released into the containment system from migrating out of the system to the soil, groundwater or surface water;

v. Before a facility receives, stores, or transfers ID72 liquid waste, the facility shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, the analysis shall contain all of the information that must be known to receive, store or transfer the waste. This analysis may include published or documented data on the waste, or on wastes generated in similar processes. The analysis shall be repeated as necessary to ensure it is accurate and up to date;

vi. Rail carriers that receive, store or transfer incompatible wastes or mixtures of



incompatible wastes and other materials shall take precautions to prevent reactions that generate extreme heat or pressure, fire or explosions, or violent reactions; produce uncontrolled toxic mists, fumes or gases in sufficient quantities to threaten human health or the environment; produce uncontrolled flammable fumes or gases in sufficient quantities to pose risk of fires or explosions; damage the structural integrity of the equipment or the facility; or through other like means threaten human health or the environment. The facility shall document compliance with precautions upon request by the Department of Environmental Protection. This documentation may be based on references to published scientific literature, data from trial tests (for example, bench scale or pilot scale tests), waste analysis, or the results of treatment of similar wastes by similar treatment processes and under similar operating conditions;

vii. Upon detection of a release of ID72 liquid waste to the environment, the facility shall stop the release; contain the released material; clean up and properly manage the released wastes and other materials; and if necessary, repair and replace any leaking storage or treatment containers or tanks prior to returning them to service.

20. A rail facility shall not accept or in any manner handle hazardous waste as defined at N.J.S.A. 13:1E-38 or regulated medical waste, as defined at N.J.S.A. 13:1E-48.3 except in compliance with all applicable requirements for such activities pursuant to this chapter and N.J.A.C. 7:26G. If the facility inadvertently accepts an unauthorized waste type, the facility shall immediately report the event to the Department's Hotline at 1-877-WARNDEP, and place the waste in a secure area under the facility's control, located a safe distance from active waste areas, until the operator receives instruction from the Department as to the proper disposal of the waste.

21. Non-putrescible solid waste shall not remain at the rail facility for more than 10 days, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers. Putrescible solid waste shall not remain at any rail facility for greater than 72

hours.

22. Effective security procedures shall be implemented to control entry and exit at all times.

23. The Department's designated representatives and inspectors shall have the right to enter and inspect any building or any other portion of a rail facility, at any time. This right to enter and inspect includes, but is not limited to:

- i. Observing and sampling any materials on site;
- ii. Photographing any portion of the facility, solid waste vehicles, containers, and container contents;
- iii. Investigating an actual or suspected source of pollution of the environment;
- iv. Ascertaining compliance or non-compliance with the statutes and regulations of the Department; and
- v. Reviewing and copying all records that are required to be maintained by federal or state law, which shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

24. Any release or discharge of any solid waste at the rail facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hot Line at 1-877-WARNDEP. The report shall specify the type of substance discharged and the estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification.

25. The rail carrier shall designate an on-site emergency coordinator who will be available during all hours of operation for the purpose of handling emergency situations such as, but not limited to, spills, discharges or releases of solid wastes at the facility.

26. Any rail facility that fails to operate in compliance with the requirements of this

section shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5.

1. The rail carrier shall comply with the following record keeping and reporting requirements at each and every facility owned or operated by it within the State of New Jersey that is engaged in the transportation of solid waste pursuant to N.J.A.C. 7:26-2D(d):

i. The facility shall maintain a daily record of wastes received. The record shall include the information specified in N.J.A.C. 7:26-2.13(a);

ii. The daily record shall be maintained, shall be kept, and shall be available for inspection in accordance with N.J.A.C. 7:26-2.13(b);

iii. The facility shall verify, retain, and make available for inspection a waste origin/disposal (O and D) form for each load of solid waste received in accordance with N.J.A.C. 7:26-2.13(c);

iv. The facility shall submit monthly summaries of wastes received to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning and the solid waste coordinator for the county in which the facility is located on forms provided by the Department (or duplicates of same), no later than twenty (20) days after the last day of each month. The monthly summaries shall include the information specified in N.J.A.C. 7:26-2.13(e).

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#### 7:26-3.2 Registration

(a) (No change.)

(b) After July 2, 1984, any person who files an application for approval of a registration statement shall submit with the application the disclosure statement described in N.J.A.C. 7:26-16.4. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-2.1(c)2, [N.J.A.C. 7:26-]16.3(d) and/or 16.6(k), but shall apply in the case of a licensee or permittee which must file a disclosure statement for any lessor which

holds a beneficial interest in the licensee or permittee pursuant to N.J.A.C. 7:26-16.6(i) or (j).

(c) – (m) (No change.)

#### 7:26-3.6 Intermodal container facility

(a) This section contains the regulations of the Department governing the authorization and operation of intermodal container facilities. [Such facilities shall handle only containerized solid waste as defined at N.J.A.C. 7:26-1.4 and limited to the following solid waste types identified and listed at N.J.A.C. 7:26-2.13 as ID 10, 12, 13, 13C, 23, 25, 27, 72, 73, and 74. Such facilities shall not accept or in any manner handle hazardous waste or regulated medical waste, as defined at N.J.A.C. 7:26-1.4 and 3A.6 respectively. This subsection does not prohibit the operator of an authorized intermodal container facility from conducting other solid waste, regulated medical waste, or hazardous waste management activities at the site of the intermodal container facility, provided the operator complies with all applicable permitting and operating requirements for such activities pursuant to this chapter and N.J.A.C. 7:26G.]

**1. This section shall not apply to a rail carrier that transfers solid waste to or from rail cars. For the purpose of this subchapter, the term “rail carrier” shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) and holds out to the general public that the operations at the facility for which the exemption under this section is applicable are being conducted by it or on its behalf as part of its rail transportation services. Such rail carriers, although exempted from this section, are fully subject to regulation pursuant to N.J.A.C. 7:26-2D.**

**2. Intermodal container facilities shall handle only containerized solid waste as defined at N.J.A.C. 7:26-1.6 and limited to the following solid waste types identified and listed at N.J.A.C. 7:26-2.13 as ID 10, 12, 13, 13C, 23, 25, 27, 72, 73, and 74. Such facilities shall not**

accept or in any manner handle hazardous waste or regulated medical waste, as defined at N.J.A.C. 7:26-1.4 and 3A.6, respectively. This subsection does not prohibit the operator of an authorized intermodal container facility from conducting other solid waste, regulated medical waste, or hazardous waste management activities at the site of the intermodal container facility, provided the operator complies with all applicable permitting and operating requirements for such activities pursuant to this chapter and N.J.A.C. 7:26G.

(b) - (o) (No change.)

7:26H-1.6 Certificate of public convenience and necessity

(a) - (e) (No change.)

(f) A rail carrier as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) and holds out to the general public that the operations at the facility are being conducted by it or on its behalf as part of its rail transportation services and that is engaged in the business solid waste disposal or transportation by rail, but does not engage in the business of solid waste collection (as defined by N.J.S.A. 13:13E-3) by other means of transportation within the State of New Jersey, is not subject to the provisions of this chapter.

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994) and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize the proposal.

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Date

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Bradley M. Campbell, Commissioner  
Department of Environmental Protection